

Employers for Flexibility in Health Care Coalition

April 7, 2014

The Honorable Kevin Brady
Chairman
House Ways & Means Committee
Subcommittee on Health
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Jim McDermott
Ranking Member
House Ways & Means Committee
Subcommittee on Health
1106 Longworth House Office Building
Washington, DC 20515

Dear Chairman Brady and Ranking Member McDermott:

The Employers for Flexibility in Health Care (E-FLEX) would like to thank you for convening a hearing on the final regulations under section 4980H (the employer mandate) and sections 6055 and 6056 (information reporting to the IRS) that the Department of the Treasury and the Internal Revenue Service issued recently.

The E-FLEX Coalition includes leading trade associations and businesses in the retail, restaurant, hospitality, supermarket, construction, temporary staffing, agriculture, and other service-related industries, as well as employer-sponsored health plans insuring millions of American workers. The E-FLEX Coalition represents employers who create millions of jobs each year, employ a significant percentage of the U.S. workforce, offer flexible working environments for employees, and are a leading contributor to the nation's economic job recovery.

The E-FLEX Coalition has engaged in a constructive dialogue with Treasury since 2011 about the employer requirements under the ACA, including the information reporting requirements. As evidenced by our previous comment letters and meetings with the Administration, the Coalition has sought to work with the Administration to develop regulations that provide workable options for employers to administer and offer health coverage to their employees. E-FLEX Coalition members appreciated the flexibility for employers with variable hour workforces that Treasury provided in the final regulations on section 4980H, particularly transition relief for non-calendar year plans, the look-back measurement method of determining employee's full-time status and three employer affordability safe harbors. These common-sense provisions acknowledge the real-world circumstances in which employers will be working to comply with the ACA.

Conversely, the E-FLEX Coalition remains concerned that the final regulations on the ACA's information reporting requirements are unduly burdensome for employers and of limited use to employees. In numerous comment letters (see attached) and meetings over almost three years, the E-FLEX Coalition provided detailed proposals to the Administration for less onerous approaches to information reporting that would give employers the option of prospectively certifying to the IRS that coverage meeting the ACA's minimum value standard and an employer affordability safe harbor was available to full-time employees. Such an approach could improve the accuracy of initial eligibility determinations for premium assistance tax credits and reduce the potential for individuals to be subjected to unexpected repayments of any tax credits for which Exchanges incorrectly deemed them to be eligible. In addition, the proposed approach could facilitate a more limited approach to information reporting on the coverage offered to individual employees, reducing the complexity and burden of ACA compliance for employers.

In light of the approach taken in the final information reporting regulations, the E-FLEX Coalition is exploring legislative options for reforming the information reporting requirements under sections

6055 and 6056. For example, members of the E-FLEX Coalition have expressed support for S. 2176, the Commonsense Reporting Act of 2014, introduced by Sen. Mark Warner last month. The bill would eliminate the ACA's requirement for employers to collect and report Social Security numbers for all plan enrollees and would implement an opt-out system with respect to employees receiving information electronically. Importantly, the bill also would require the Department of the Treasury, in consultation with the Departments of Health and Human Services and Labor and the Small Business Administration, to conduct a study and report to Congress on the development of a prospective reporting system.

Although sharp differences in opinion about the ACA remain, the E-FLEX Coalition remains optimistic that well-intentioned people on both sides of the debate can come together on common-sense changes to the ACA that will make compliance in the real world less onerous for businesses without affecting employees' access to health coverage. The E-FLEX Coalition looks forward to continuing to work with all Members of Congress on a bipartisan basis to strengthen and preserve employer-sponsored coverage.

Sincerely,

Employers for Flexibility in Health Care (E-FLEX) Coalition

For more information please contact any member of the E-FLEX Coalition's Executive Committee:

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